Claims 11 and 14 were rejected in the parent application under the judicially created doctrine of obviousness-type double patenting, the Office Action stating that the claims were unpatentable over claims 1-30 of U.S. Patent No. 6,077,832 ('832 patent). The Examiner indicated that the claims read on pharmaceutical compositions and methods of treatment wherein the crystallinity of the active ingredient has no bearing on the pharmacological or medicinal activity of the composition.

Applicants respectfully submit that the instantly claimed invention represents an improvement over the invention claimed in the '832 patent that is encompassed by the claims of the '832 patent. Applicants submit that the crystalline forms of the compound have the same pharmaceutical activity and uses as disclosed for the amorphous compound in the '832 patent. However, the presently claimed invention is restricted to compositions and methods which include specifically claimed crystalline forms which are neither disclosed nor suggested by the '832 claims.

Applicants acknowledge that in certain pharmaceutical compositions, such as solutions where the compound is completely solubilized, the specific crystal form of the compound would be indistinguishable. However, in other pharmaceutical compositions, e.g., solid dosage formulations, the crystal form of the compound would indeed be determinable and distinct from formulations containing the amorphous compound of the '832 patent. The instantly pending composition claims are restricted to compositions containing the specified crystalline forms of the compound. Hence the claim does not read on pharmaceutical compositions wherein the compound does not exist in crystalline form. Similarly, the instantly pending method claims are also restricted to methods of treatment which comprise administering the compound in ' crystalline form and do not read on methods of treatment which do not involve administering the compound in crystalline form.

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Applicants respectfully submit that the instant application is in condition for substantive examination, which action is respectfully requested. The Examiner is invited to contact the undersigned at 483-8222, to discuss this case further if desired.

Respectfully submitted,

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11. (Amended) A pharmaceutical composition comprising [a compound as claimed in any one of claims 1 to 6] a crystalline form of Form II 5,6-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole having substantially the same X-ray powder diffraction pattern as **Figure 2**, wherein said X-ray powder diffraction pattern is obtained with a diffractometer equipped with a diffracted beam curved graphite monochromator using copper Kα X-radiation, and at least one pharmaceutically acceptable carrier therefor.

14. (Amended) A method for the treatment of a herpes viral infection in a human which comprises administering to the human host, an effective antiviral amount of a crystalline form of Form II 5,6-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole having substantially the same X-ray powder diffraction pattern as **Figure 2**, wherein said X-ray powder diffraction pattern is obtained with a diffractometer equipped with a diffracted beam curved graphite monochromator using copper Kα X-radiation [a solvate or crystalline form of 5,6,-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole as claimed in any one of claims 1 to 6].

16. (New) A pharmaceutical composition comprising a crystalline form of 5,6-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole having substantially the same X-ray powder diffraction pattern as **Figure 3**, wherein said X-ray powder diffraction pattern is obtained with a diffractometer equipped with a diffracted beam curved graphite monochromator using copper Kα X-radiation, and at least one pharmaceutically acceptable carrier therefor.

17. (New) A pharmaceutical composition comprising a crystalline form of Form V 5,6-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole having substantially the same X-ray powder diffraction pattern as **Figure 5**, wherein said X-ray powder diffraction pattern is obtained with a diffractometer equipped with a diffracted beam curved graphite monochromator using copper Kα X-radiation,

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and at least one pharmaceutically acceptable carrier therefor.

18. (New) A pharmaceutical composition comprising an admixture of two or more forms or solvates of 5,6-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole selected from the group consisting of Form I, Form II, ethanol solvate, Form IV, Form V, and amorphous, and at least one pharmaceutically acceptable carrier therefor.

19. (New) A method for the treatment of a herpes viral infection in a human which comprises administering to the human host, an effective antiviral amount of a crystalline form of 5,6-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole having substantially the same X-ray powder diffraction pattern as **Figure 3**, wherein said X-ray powder diffraction pattern is obtained with a diffractometer equipped with a diffracted beam curved graphite monochromator using copper Kα X-radiation,.

20. (New) A method for the treatment of a herpes viral infection in a human which comprises administering to the human host, an effective antiviral amount of a crystalline form of Form V 5,6-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole having substantially the same X-ray powder diffraction pattern as **Figure 5**, wherein said X-ray powder diffraction pattern is obtained with a diffractometer equipped with a diffracted beam curved graphite monochromator using copper Kα X-radiation.

21. (New) A method for the treatment of a herpes viral infection in a human which comprises administering to the human host, an effective antiviral amount of a composition comprising an admixture of two or more crystalline forms or solvates of 5,6-dichloro-2-(isopropylamino)-1-β-L-ribofuranosyl-1H-benzimidazole selected from the group consisting of Form I, Form II, ethanol solvate, Form IV, Form V, and amorphous.

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